JUDGMENT OF THE COURT (Fifth Chamber)

25 October 2001 *

In Case C-398/98,

Commission of the European Communities, represented by D. Triantafyllou and O. Couvert-Castéra, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented by P. Mylonopoulos and N. Dafniou, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by establishing and maintaining a system for stocks of petroleum products which directly links the facility to transfer the storage obligation to refineries established in Greece to an obligation to obtain

* Language of the case: Greek.

supplies of petroleum products from those refineries, and by prohibiting service stations from obtaining supplies from refineries or from another Member State, the Hellenic Republic has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC),

THE COURT (Fifth Chamber),

composed of: P. Jann, President of the Chamber, D.A.O. Edward (Rapporteur), A. La Pergola, L. Sevón and M. Wathelet, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 21 September 2000, at which the Commission was represented by D. Triantafyllou and the Hellenic Republic by P. Mylonopoulos, N. Dafniou, I. Prodromidis and C. Kontogianni, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 February 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 6 November 1998, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that, by establishing and maintaining a system for stocks of petroleum products which directly links the possibility of transferring to the refineries operating in the country the obligation to stock supplies with an obligation to obtain supplies of petroleum products from those refineries, and by precluding service stations from obtaining supplies from refineries or from another Member State, the Hellenic Republic had failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC).

Background to the dispute

2 Council Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products (OJ, English Special Edition 1968 (II), p. 586), as amended by Council Directive 72/425/EEC of 19 December 1972 (OJ, English Special Edition 1972 (28–30 December), p. 69; 'Directive 68/414'), requires Member States to maintain minimum stocks of petroleum products. The level of those stocks must be equivalent to at least 90 days' average daily internal consumption in the preceding calendar year.

3 Under Article 6 of Directive 68/414, only quantities fully at the disposal of a Member State in the event of difficulty obtaining oil supplies are to be regarded as stocks within the meaning of the directive. Member States may choose to maintain the stocks in their territory. Stocks may also be established in the territory of one Member State on behalf of undertakings established in another, in accordance with individual agreements between governments. Directive 68/414 leaves it to Member States to decide on the undertakings obliged to store those reserves.

4 In Greece, the establishment of minimum stocks of petroleum products is governed by Articles 8(2) and 10 of Law No 1571/85, as amended by Law No 2289/95, the Regulation on the control of goods and Article 10 of Presidential Decree No 1224/81.

5 Under those rules, the minimum stocks of petroleum products are to be kept in Greece and to be stored by the petroleum marketing companies ('marketing companies') in tanks owned or leased by them outside the refineries.

6 Since 1 January 1996, the marketing companies have been entitled to transfer their obligation, in whole or in part, to refineries in Greece where they bought products during the previous calendar year. The transfer may be made up to a total quantity equal to the volume of products of each category delivered to the marketing companies during a 90-day period in the previous year by each of the refineries with which they do business.

7 The Greek market in petroleum products is structured on three levels. The first is constituted by the refineries, which sell refined products to the marketing companies. Under Article 8(2) of Law No 1571/85, refineries operating in Greece are not entitled to sell petroleum products directly, without using the marketing companies, save as provided in Article 6(3) of that Law, dealing with supplies to the armed forces. The second level consists of the marketing companies, which may buy products from the refineries or import them and are responsible for supplying petrol stations. On the third level are the petrol stations, which can neither import petroleum products nor acquire them directly from the refineries, but must buy them from the marketing companies.

Pre-litigation procedure

8 In September 1992, the Commission informed the Greek authorities that certain aspects of the Greek system on the compulsory maintenance of emergency stocks of petroleum products might be contrary to Article 30 of the Treaty.

9 After a lengthy exchange of correspondence and a series of bilateral meetings, the Greek authorities informed the Commission in May 1994 of the work undertaken to amend the legislation on the storage and distribution of petroleum products. In December 1994 they notified the Commission of a draft law designed to amend Article 10 of Law No 1571/85, as amended by Law No 1769/88 and Law No 2008/92. That draft became Law No 2289/95 at the beginning of 1995.

10 On 19 September 1995, the Commission sent the Greek authorities a letter of formal notice stating that, despite the amendments, the legislation on the storage and distribution of petrol products still appeared to be contrary to Article 30 of the Treaty. The Commission asked the Greek authorities to submit their observations in that regard.

11 The Greek Government answered, in a letter of 1 December 1995, that the Greek system on the compulsory maintenance of emergency stocks of petroleum products was consistent with Article 30 of the Treaty, that it did not discriminate between domestic products and imported products and that it had no influence on the price of petroleum.

12 Following a bilateral meeting, by letter of 11 July 1996, the Greek authorities sent the Commission a draft amendment of Article 10(3) of Law No 1571/85, as amended by Law No 2289/95.

13 Being unconvinced by the Greek authorities' arguments, the Commission issued a reasoned opinion on 17 June 1997, calling upon the Hellenic Republic to take the necessary compliance measures within two months. The Greek Government replied to that opinion by maintaining its previous argument.

14 In those circumstances, the Commission decided to bring the present action.

Arguments of the parties

15 The Commission argues that the system devised by the Hellenic Republic in order to comply with the storage obligation imposed by Directive 68/414 is contrary to Article 30 of the Treaty because the possibility which the Greek legislation offers the marketing companies of transferring their storage obligation to refineries established in Greece is conditional upon their having made purchases from those refineries during the previous calendar year.

16 The Commission makes no complaint of the fact that the emergency stocks may be stored at refineries, but considers that the obligation to buy petroleum products from refineries established in Greece, which is imposed upon the marketing companies as a condition for their being able to transfer their storage obligation, constitutes an obstacle to the free movement of goods. In practice, that obligation clearly discriminates in favour of national products to the detriment of foreign ones. The importation of petroleum products, while not being prohibited, is strongly discouraged, since, if the marketing companies were to obtain their supplies in other Member States, they would lose the possibility of transferring their storage obligation to the refineries.

17 The Commission adds that the discrimination against imports of petroleum products is intensified by the fact that the petrol stations are obliged to take their supplies through the intermediary of the marketing companies.

18 It submits that the legislation in question cannot be justified under Article 36 of the EC Treaty (now, after amendment, Article 30 EC) because the aim pursued by the Greek authorities, namely the ensuring of continuity in the supply of petroleum products, could be achieved by less restrictive measures.

19 The Greek Government argues that the system in question does not create any discrimination against imports of petroleum products, and that it affects the marketing of national products and imported products in the same way.

20 It contends that the marketing companies obtain their supplies from refineries established in Greece not because of the legislation with which the Commission finds fault but because of market conditions. First, the refineries are connected by pipeline to most of the large installations of the marketing companies, so that direct supplies can be provided at a low cost. Second, the refineries are situated close to large centres of consumption, where the marketing companies operate. Finally, the refineries are able to supply, on time and in small quantities, the amounts required by the marketing companies' low-capacity regional installations scattered around Greece.

21 Even if the system in question does constitute an obstacle to the free movement of goods, the Greek Government argues that that obstacle is justified by a public interest objective, namely security of supply of petroleum products, which benefits from the derogation provided by Article 36 of the Treaty. The Government argues that that objective cannot be achieved by less restrictive measures. The refineries' fundamental right to economic freedom would be excessively restricted if they were required to store the minimum stocks of petroleum products, and thus assume an obligation of the marketing companies, if the latter were not required in return to purchase their supplies from those refineries.

Findings of the Court

22 Article 30 of the Treaty is designed to prohibit all trading rules enacted by Member States which are capable, directly or indirectly, actually or potentially, of hindering intra-Community trade (see Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5).

23 It is undisputed that the possibility which the legislation in question offers to the marketing companies of transferring their obligation to store petroleum products to the refineries gives rise to advantages for those companies.

24 However, the Greek system on the compulsory maintenance of emergency stocks of petroleum products means that marketing companies wishing to transfer their storage obligation are obliged to obtain a significant part of their supplies from refineries established in Greece.

25 More precisely, a marketing company may transfer the obligation to store petroleum products to a refinery in Greece only in respect of the volume of products which that refinery supplied to the company over a 90 day period during the preceding calendar year. A marketing company must therefore buy a large quantity of petroleum products each year from a refinery established in Greece in order to to be entitled, the following year, to transfer its storage obligation to that refinery.

26 It follows that making the transfer of the storage obligation conditional upon the purchase of petroleum products from refineries established in Greece constitutes discrimination against petroleum products from refineries situated in other Member States, in that it makes their marketing more difficult. Although marketing companies may free themselves from the obligation to store petroleum products at their installations if they obtain supplies from refineries established in Greece, they cannot do so if they buy their petroleum products from refineries situated in other Member States.

27 It must therefore be held that the Greek system on the compulsory maintenance of emergency stocks of petroleum products constitutes a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 30 of the Treaty.

28 As for the question whether the system in question may nevertheless be justified, as the Greek Government claims, under Article 36 of the Treaty, it should be recalled that, according to the case-law of the Court of Justice, national rules adopted in order to achieve one of the objectives referred to in that provision are compatible with the Treaty only in so far as they do not exceed the limits of what is appropriate and necessary in order to achieve the desired objective (see Case C-128/89 *Commission* v *Italy* [1990] ECR I-3239, paragraph 18).

29 The Greek Government cites the objective of maintaining a stock of petroleum products on Greek territory for reasons of public security. It is true that the maintenance on national territory of a stock of petroleum products allowing continuity of supplies to be guaranteed constitutes a public security objective within the meaning of Article 36 of the Treaty (see Case 72/83 *Campus Oil and Others* [1984] ECR 2727, paragraph 35).

30 However, the arguments of the Greek Government referred to in paragraph 21 of this judgment are purely economic arguments which can never serve as justification for a quantitative restriction within the meaning of Article 30 of the Treaty (see, to that effect, *Campus Oil*, paragraph 35).

31 In any event, having regard in particular to the arguments set out by the Advocate General in points 43, 44 and 46 to 48 of his Opinion, the objective of public security could have been achieved by less restrictive measures without it being necessary to make the transfer of the storage obligation to refineries established in Greece conditional upon the obligation to obtain supplies of petroleum products from those refineries.

32 In those circumstances, it must be held that, by establishing and maintaining a system for the compulsory maintenance of emergency stocks of petroleum products which directly links the facility for marketing companies to transfer their storage obligation to refineries established in Greece to an obligation to obtain their supplies of those products from those refineries, the Hellenic Republic has failed to fulfil its obligations under Article 30 of the Treaty.

Costs

33 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Hellenic Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. By establishing and maintaining a system for the compulsory maintenance of emergency stocks of petroleum products which directly links the facility for companies which market those products to transfer their storage obligation to refineries established in Greece to an obligation to obtain their supplies of those products from those refineries, the Hellenic Republic has failed to fulfil its obligations under Article 30 of the EC Treaty (now, after amendment, Article 28 EC).

2. The Hellenic Republic is ordered to pay the costs.

Jann Edward La Pergola

Sevón Wathelet

Delivered in open court in Luxembourg on 25 October 2001.

R. Grass

Registrar

P. Jann

President of the Fifth Chamber